

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

JUL 13 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of the Pay )  
Telephone Reclassification )  
and Compensation Provisions )  
of the Telecommunications )  
Act of 1996 )  
 )  
To: The Commission )

CC Docket No. 96-128

COMMENTS OF SKYTEL COMMUNICATIONS, INC.

SkyTel Communications Inc. ("SkyTel") formerly Mobile Telecommunication Technologies Corp. ("Mtel")<sup>1/</sup>, by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's rules, hereby submits its comments in response to the Commission's Public Notice (DA 98-1198) ("Public Notice") released June 19, 1998 in the captioned proceeding.<sup>2/</sup>

The Commission seeks further comment on certain issues raised by the decision of the United States Court of Appeals for the District of Columbia Circuit in MCI Telecommunications Corporation

<sup>1/</sup> Mtel has previously participated extensively in this proceeding. It has submitted comments in response to the Commission's Public Notice of August 25, 1997 (DA 97-1673) inviting comment in response to the remand decision by the D.C. Cir., Illinois Public Telecommunications Ass'n v. FCC, 117 F 3rd 555 (1997). It has also filed a Petition for Reconsideration of the Commission's Second Report and Order, CC Docket No. 96-128, 13 FCC Rcd 1778 (1997), ("Second Report and Order"). It has also filed numerous Comments and Reply Comments in response to other Comments and Oppositions filed by other parties in this proceeding.

<sup>2/</sup> The Public Notice requested the Comments in this matter be submitted by July 13, 1998 and Reply Comments be submitted by July 27, 1998. Accordingly, these Comments are timely filed.

at 6

et al. v. FCC<sup>3/</sup> which granted in part and denied in part petitions for review of the Second Report and Order, and remanded, but did not vacate, the case to the Commission for further proceedings.<sup>4/</sup>

**I.    The Commission's "Market Rate" of  
28.4 Cents is Not Reasonable**

In its Second Report and Order the Commission established a default per-call rate of 28.4 cents, which rate will be in effect for two years. Second Report and Order, at ¶ 117. After that time, the "fair compensation" rate mandated by Section 276 of the Act shall be the deregulated market rate for a local coin call, adjusted for costs. The default rate was based on a perceived "market" rate of 35 cents, and a reduction of 6.6 cents, to reflect "cost differences". Id.

In setting its default rate, the Commission did nothing more than start with the 35 cents market-based coin rate established in its Order on Reconsideration in this proceeding, and then adjust that rate to, (a) remove coin-related costs; and (b) add costs specific to subscriber 800 and access code calls. Second Report and Order, at ¶ 29.

---

<sup>3/</sup> MCI v. FCC, No. 97-1675, slip op. (DC Cir., May 15, 1998).

<sup>4/</sup> The first specific substantive issue which the Commission seeks comment on is competition in the payphone market since the deregulation of payphones and the impact on of deregulation on the local coin rate. The second specific substantive issue which the Commission seeks comment on is the reasonableness of adjusting the local coin rate for cost differences between providing coin and coinless calls as a market-based mechanism for deriving fair compensation for coinless calls.

There is no market rate for pay telephone service. The Commission's continued reliance on \$0.35 (which was the highest rate among the deregulated payphone markets reviewed by the Commission) as the market rate for local coin service is arbitrary.

Without question payphone provider costs were vastly overstated. Data from SBC indicate that SBC's total cost for a coin call amounts to \$0.162 - less than half of the \$0.40 figure proffered by the Independent Payphone Providers and relied upon by the Commission in setting the default per-call compensation rate. Further, Sprint estimates that a call based approach would yield a per-call compensation rate in the range of six cents per call. Payphone compensation for subscriber 800 and access code calls should be cost-based--not market-based--and should be determined by the cost to payphone providers of originating such calls or the cost of a coin call minus coin costs.

Should the Commission maintain its "carrier pays" approach, the Commission must revise its compensation arrangements to reflect a measured rate that accounts for varying call lengths.

**II. The Commission's Failed to Properly  
Consider the Length of 1-800 Calls  
in Determining a Fair Compensation Rate**

Were the proper market rate for coinless calls properly determined, the Commission has failed to take into account that payphone calls vary in length, and the charges associated with those calls should also vary.

Like all other calls, 1-800 calls vary in length from call to call. Paging calls last, on average, only ten percent as long as other calls. Yet, the default rate established by the Commission does not take into account call duration in assessing the appropriate default compensation rate. As a result, called parties are made to pay the same charge for a very brief paging call as is necessary for a much longer communication. The Second Report and Order does not explain why this key distinction was not taken into consideration in assessing what is fair and equitable to PSPs. The effect of this is to vastly overstate the cost that paging carriers must pay on a per call basis.

### **III. Coinless and Coin Calls are Not in the Same Market**

Accepting for the moment the appropriateness of using the Commission's concept of "market rates", the Commission must appreciate that toll-free and coin calls are not in the same market. In the case of toll-free calls, the called party pays for the call itself, while this is not the case with coin calls. In fact, pursuant to the Commission's Second Report and Order, the calling party is required to incur no costs in the case of toll-calls. Therefore, the ability of the ultimate consumer (i.e. the calling party) to wield any influence in the pay telephone market is a non-issue if the caller does not have to pay and thus has no fundamental reason (i.e. decision based upon cost of call) for choosing between different payphones.

#### **IV. The Issue of "Calling Party" Pays Must Be Revisited**

The Commission's illogical and unworkable "carrier pays" compensation scheme must be changed wholesale, and replaced with a compensation mechanism, such as caller pays, that will further the goals of Section 276 of the 1996 Communications Act. Requiring the person who chooses to utilize a payphone for a call (i.e. the calling party) to pay, up-front, the compensation to PSPs is the only way to establish a meaningful market (if such a market can ever exist).<sup>5/</sup> Accordingly, the Commission must adopt a true market-based approach in which payphone users are required to pay directly for the costs imposed by their decision to use a particular payphone. The "caller pays" mechanism is easily and readily available<sup>6/</sup>, more truly defines the market based approach for which the Commission longs, and most importantly, it will provide PSPs with "fair compensation".

A true "market" approach is simply not applicable where the caller cares not about the "market rate" that is borne by some other party. The only true market-based surrogate for 800 subscriber and access code calls is a calling party pays mechanism.

---

<sup>5/</sup> The payphone market is not, and may never be, competitive because the pay telephone industry currently is one based on locational monopolies.

<sup>6/</sup> "Caller pays" is the most cost effective solution because IXCs and PSPs will not have to implement costly modifications to their systems to needlessly track toll-free and dial around calls, call blocking can be avoided, and the potential for fraud will be substantially reduced.

The market relationships and dynamics which underlie a market based compensation approach rest upon the ability of a caller -- not a carrier or 800 subscriber -- to impose market discipline on PSPs by either agreeing or refusing to pay the PSPs price for the use of the phone at the time the call is made. A "carrier pays" system is more burdensome and costly than a caller pays system and imposes significant burdens on virtually every participant in the payphone market other than the caller.

**V. CONCLUSION**

Common sense and fundamental fairness dictate that the Commission completely revisit its payphone compensation rules by allowing the public an opportunity to provide comment in this very important matter. In this proceeding to date, the Commission's regulatory flexibility analysis failed to consider the interests of all affected parties.<sup>1/</sup> The Commission has ignored concerns that its "carrier pays" scheme significantly harms 800 subscribers and consumers in general. The Commission must review its carrier pays determination and require the party which actually uses a payphone,

---

<sup>1/</sup> According to the Commission, there are nearly 7 million small entity 800-subscribers and paging companies that may be affected by the payphone decisions. These entities will be required to pay whatever rate is imposed by IXCs to block calls from payphones (thereby harming their businesses) in order to avoid paying compensation.

i.e, the caller, to provide the compensation that should be accorded to the PSPs.

Respectfully submitted,

SKYTEL COMMUNICATIONS, INC.

By: 

Thomas Gutierrez  
J. Justin McClure

Its Attorneys

Lukas, Nace, Gutierrez & Sachs  
1111 19th Street, N.W.  
Suite 1200  
Washington, D.C. 20036  
(202) 857-3500

July 13, 1998